American Chemistry Council

ACC Testimony in Opposition to

HB 5036—An Act Concerning Children's Products and Chemicals of High Concern
HB 5354—An Act Concerning Chemicals of High Concern to Children

Introduction/Overview

The American Chemistry Council (ACC) is a national trade association representing chemicals and plastics manufacturers in the United States, including member companies in the state of Connecticut. Our members are committed to the safety of their products and to the protection of public health.

Over 96% of all manufactured goods are directly touched by the business of chemistry, making this industry an essential part of every facet of our nation's economy. Chemistry provides significant economic benefits in every state including Connecticut. Thanks to chemistry, our lives are healthier, safer more sustainable and productive than before.

The products of chemistry in Connecticut are leading to cutting edge innovations in our state and across the country, enabling advancements in life-saving medical technology, aerospace, computing, energy efficiency and scientific research. The products in this state are used for a wide range of health and safety applications in Connecticut including styrene based products that are used in wastewater treatment and providing oxygen that is used in hospitals and home healthcare for patients ranging from premature infants to seniors.

Over 11,000 citizen of Connecticut are employed by the U.S. chemistry industry with another 14,750 related jobs in Connecticut.

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Unfortunately, state laws and regulations like HB 5036 and HB 5354 are hindering our state's economic recovery. In fact, Connecticut dropped from 23rd to 37th in the nation in state chemical production in only 2 years. Unlike other states like North Carolina that are seeing production increases, Connecticut has lost more than a half of its shipments – dropping from $8.4 billion to $2.5 billion in two years.

Health and Safety

ACC members are committed to continuously improving their environmental, health and safety performance – for our workers, our families, our customers and the public. In fact, commitment to implement industry's voluntary health, safety and environmental performance initiative, Responsible Care®, is a condition of membership within ACC. ACC shares this committee's interest in promoting a healthy and safe environment for Connecticut's children.

Member companies are committed to adhering to the Responsible Care product safety measuring and publicly reporting performance using the Responsible Care Performance Measures Applying the Responsible Care Management System to achieve and verify results.

Furthermore, we believe that assessing product safely is more than simply noting the presence of a chemical substance in a formulation. It must also include considerations of product use, user exposure to the chemical in the product, and the functionality of the chemical in the formulation, as well as the unintended consequences of removal of a chemical from a product.

Chemical Regulation is a Significant Cost to Connecticut

Connecticut does not have the financial resources or technical expertise to undertake a wide-ranging authoritative chemical review and regulatory process. In fact, in 2013, the Maine Department of Environmental Protection opposed chemical regulation legislation that was vetoed by the Governor (LD 1181) advocating it would cost $1.47 million over the next two years through additional staffing to implement. The legislation was vetoed by the Governor and would have required manufacturers of chemicals on the "high concern list" to report which products contain the chemicals.

Prioritization Process Must be Systematic and Based on Exposure

HB 5036 and HB 5354 proposes to create a list of priority chemicals in a haphazard manner, without applying systematic, screening-level criteria that integrate hazard criteria with greatest potential for exposure to identify those chemicals of potential concern to children. The bill permits chemicals to be added to Connecticut's priority list if they are simply present anywhere including biomonitoring studies, household or in drinking water, or in consumer products used in or present in homes.

The problem with this approach is that it is a very crude method and, as such, it is very likely to produce a long list of chemicals that may or may not pose any real exposure to anyone, children. Therefore, it is unlikely to actually identify authentic priorities. The mere "presence" of a chemical (in humans, in the environment, or in consumer products) does not equal harm. The U.S. Center for Disease Control (CDC) has stated clearly, "The presence of an environmental chemical in people's blood or urine does not mean that it will cause effects or disease." http://www.cdc.gov/exposurereport/pdf/FourthReport_ExecutiveSummary.pdf The same is true of the presence of a chemical in a children's or consumer product. The potential for true exposure to children at levels of concern under HB 5036 and HB 5354 would be theoretical, at best. The public health benefits of this approach, therefore, are highly questionable.

In 2011, to help explain its perspectives on prioritizing chemicals to EPA, ACC developed a simple and straightforward prioritization screening tool that applies a science- and risk-based approach that considers both the degree of hazard and extent of exposure potential when setting priorities. It leverages available data and existing hazard classification frameworks already in use across industry and agreed to by regulators.

HB 5036 and HB 5354 Completely Bypass the Most Critical Step for Children's Health: The Safety/Exposure Assessment

Once an appropriately scientific prioritization screening tool is used by a regulator to identify those substances that present the highest hazard AND greatest potential for exposure, the next critical step, from a public health standpoint, is to conduct a risk/safety assessment. In such an assessment, certain characterizations include consideration of information about product uses and reasonably anticipated exposures, including potential exposures to children. Safety characterizations use valid, reliable and relevant scientific studies and information, giving such studies and information appropriate weight, to determine potential risks associated with relevant levels of exposure under expected conditions of use.

HB 5036 and HB 5354 completely skip this critical step in the evaluation of whether any actual ~~risk~~ harm may be posed by the presence of high priority chemicals in children's and consumer products that children may encounter in Connecticut. This bill presumes – without a safety assessment to evaluate whether any real harm exists to children--that all high priority chemicals must be removed (banned) from children's products

There are a number of serious flaws with this approach. First, it assumes that once a chemical is identified as a priority chemical that the State can mandate or schedule innovation to replace it. Further, HB 5354 permits the Commissioner of Public Health to require a manufacturer or distributer of products intended for children to conduct an "alternative assessment." Alternative assessments are not trivial exercises. They can be complex, lengthy and costly. Most alternative assessment schemes today are voluntary or are tools designed by business for business. They go to the very heart of how products are made.

Safety is not the only criteria to consider when evaluating alternatives. The function (or functions) that a chemical serves in the product and the costs required to substitute an alternative is key considerations. For example, the change of a chemical material can result in changes to the equipment required to make an end-product. Making such equipment changes can require both time and money. HB 5354 does not appear to consider the other relevant factors, such as function, cost, and consumer acceptance, in dictating selection of an alternative as the ultimate objective of the bill.

Identifying priority chemicals for potential chemical regulation is an important first step when implementing a sound chemicals management program. However, leaping straight from a crude and likely ineffective prioritization straight to product bans without any scientific safety assessment to determine whether any actual harm to children exists is unscientific and unrealistic.

EPA's Actions to Strengthen the Chemical Management Safety Net

In 2010, EPA began taking several new important steps toward strengthening the federal chemical management safety net under the major federal law regulating chemicals in commerce: the Toxic Substances Control Act (TSCA). One of these was enhancements to the Inventory Update Rule (IUR), re-named the Chemical Data Reporting (CDR) rule. The CDR is a regulatory tool under which manufacturers report to EPA their uses of chemicals in a variety of industrial categories, commercial categories and consumer product categories. EPA uses this information to understand potential exposures to these chemicals. Under the new CDR, which was published on February 11, 2013, companies provided EPA more data on more chemicals than ever before. What this tells you is that EPA has access to significant data and information about chemicals in commerce and this access is going to continue to improve with each subsequent CDR. One significant change in CDR reporting that is relevant to Connecticut and other states in the U.S. is that the EPA refined the CDR consumer and commercial product categories so they are now reported separately. Companies now further distinguish among the types of consumer products so Agency and the public are better able to understand what chemicals are in children's products.

EPA is using the enhanced information from the CDR to inform its recent undertaking to perform safety assessments on its priority chemicals, called work plan chemicals, where exposures to children are a very important consideration. On March 1, 2012, EPA published the methodology and results of its prioritization process, identifying 83 substances slated for safety assessments between 2012 and 2016 at http://www.epa.gov/oppt/existingchemicals/pubs/enhanchems.html) Also, EPA makes clear in its methods document that "identification of a chemical as a TSCA Work Plan Chemical does not itself constitute a finding that the chemical presents a risk to human health or the environment. Rather, identification of a chemical as a TSCA Work Plan Chemical indicates only that the Agency intends to consider it for further review. In other words, EPA's experts are very aware that priority setting involves a screening-level evaluation only and should not be used, without additional evaluation, to impose regulatory action on a chemical.

In fact, in January 2013, EPA published the first five of its safety assessment of the initial Work Plan chemicals. Those assessments have been published for public comment and have all undergone third-party review. EPA is currently evaluating the peer reviewers' comments on the draft assessments and has indicated it may revise the assessments based on the peer reviews before issuing final assessments. Any potential risk management decisions on any of those substances will not be considered until after the assessments have been finalized or refined.

Chemical Safety Improvement Act at the Federal Level

ACC believes that our nation's primary chemicals management law must be updated to keep pace with scientific advancements and to ensure that chemical products are safe for intended use—while also encouraging innovation and protecting American jobs.

ACC supports a balanced approach to the Toxic Substances Control Act (TSCA). In May 2013, the late U.S. Senator Frank Lautenberg (D-NJ) and David Vitter (R-LA) came together with a bipartisan group of Senators to introduce the Chemical Safety Improvement Act (CSIA)—S.1009 to reform TSCA.The CSIA is a sensible, balanced compromise that will promote safety, innovation, economic growth, and job creation – four essential goals that are important to all Americans.

This bi-partisan bill co-sponsored by 25 Democrats and Republicans would enhance public safety by making changes to improve the way chemicals are regulated.

In summary, the CSIA would do the following:

- Require EPA to identify high priority chemicals for review and assessment, and determine whether those substances pose an unreasonable risk to human health or the environment under their intended conditions of use.
- EPA would initiate a prioritization screening process to identify chemicals as high or low priority for further assessment. The CSIA provides state governments an opportunity to make recommendations to EPA for substances to be prioritized.
- EPA would be required to conduct safety assessments of these chemicals based solely on considerations of risk to human health and the environment, by integrating information about the chemicals' hazard potential, its uses and its potential exposures. Furthermore, EPA would have the ability to focus on "sensitive subpopulations," such as children, when conducting safety assessments.
- EPA would determine whether a chemical meets the safety standard under its intended conditions of use. Once that safety determination is made, EPA can conclude that a chemical meets the safety standard as currently managed, needs additional controls to meet the standard, or that it cannot meet the safety standard under its intended conditions of use even with additional controls. EPA's risk management options include phase-outs and bans.
- Instead of states going it alone and expending limited State resources, CSIA requires the states to partner rather than adversaries in dealing with chemical regulation.

Other key provisions of the CSIA include;

- Requiring chemical manufacturers to conduct additional testing when warranted.
- Making more chemical information publicly available.
- Requiring EPA to use the best available science and modern scientific methods.

The CSIA provides the type of predictable and workable regulatory environment that facilitates economic growth and enhances public safety.

Since June 2013, the House of Representatives Energy and Commerce Committee have held four hearings on TSCA and are likely to introduce a bill to modernize TSCA in the very near future. The prospects of modernizing TSCA have never looked b righter. It is likely that one of these bills will improve federal chemical regulation in ways that will help the states better protect their citizens and environments, such as by providing the states access to EPA's confidential

business information (CBI) on chemicals – a suggestion that has been recognized widely as an important improvement to the existing statute

The legislation establishes a scientifically robust system, policies and procedures under which EPA would have current, best available science and information to make timely safety determinations about existing chemicals in commerce. The legislation requires that EPA identify high priority chemicals for review and assessment, and determine whether those substances pose an unreasonable risk to human health or the environment under their intended conditions of use.

Connecticut does not have the financial resources or technical expertise to undertake a wide-ranging authoritative chemical review and regulatory process.

We urge the State of Connecticut to work with the U.S. EPA and take advantage of the federal agency's resources in addressing issues of importance to the state in terms of chemical regulation.

Accordingly, we oppose HB 5036 and HB 5354 and urge you to allow the federal government to implement chemical regulation reform at the national level.